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November 3, 2014

Hon. Andrew J. Peck, U.S.M.J.
Southern District of New York
Daniel Patrick Moynihan Courthouse
500 Pearl Street, Courtroom 20D
New York, New York 10007

Re: Rio Tinto plc v. Vale S.A., et al., Civil Action No. 14-cv-3-42 (RMB) (AJP) (S.D.N.Y.)

Dear Judge Peck:

At page 7 of our October 30, 2014 letter (Docket No. 114) (the “Letter”), we inadvertently cited to the objection to the special master’s report in *Seaman v. Sedgwick LLP*, No. SACV11-644 DOC (RNBx) (C.D. Cal.), rather than to the District Court’s opinion in that same case. The District Court opinion appears at *Seaman v. Sedgwick LLP*, No. SA CV 11-0664-DOC, 2014 WL 3738055 (C.D. Cal. July 28, 2014) (holding that where plaintiff relied on the discovery accrual rule and special master ordered production of documents concerning plaintiff’s investigation of defendants and communications related thereto as relevant, plaintiff put his knowledge of claims at issue and waived privilege as to documents demonstrating when plaintiff and his counsel learned of facts putting them on notice of their claims and what those facts are and denying request for all privileged documents without prejudice for movant to show documents were necessary to the defense). We apologize for the error and refer the Court to the correct citation.

In addition, we respectfully refer the Court to the following other cases finding implied waiver where a party has put privileged material at issue. *See, e.g., United States v. Exxon Corp.*, 94 F.R.D. 246, 248-249 (D.D.C. 1981) (privilege waived when the purpose of discovery is to ascertain whether one party acted in reliance on the representations of the other party when the issue has been voluntarily raised, and when “the waiver is generated by the injection of an entire defense . . . the waiver must pertain to all documents bearing upon the subject matter of the defense”); *Russell v. Curtin Matheson Scientific, Inc.*, 493 F. Supp. 456, 458 (S.D. Tex. 1980) (“[Plaintiffs] have, however, by an affirmative act for their own benefit, the raising of the

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equitable tolling issue, placed information protected by the privilege in issue. . . . To protect against disclosure of such information would be manifestly unfair to the defendants.” (internal quotation marks omitted)); *Regents of Univ. of California v. Micro Therapeutics, Inc.*, No. C 03-05669 JWRS, 2007 WL 2069946, at *3 (N.D. Cal. July 13, 2007) (“A litigant cannot place into issue privileged matters and also claim that what has been placed into issue still remains privileged and not subject to full disclosure.”); *Byers v. Burleson*, 100 F.R.D. 436, 440 (D.D.C. 1983) (“Here, the plaintiff has waived the privilege because the information which the defendant seeks is necessary to resolve the precise statute of limitations issue which the plaintiff has interjected into the case.”); *Landmark Screens, LLC v. Morgan, Lewis & Bockius LLP*, C08–02581 JF (HRL), 2009 WL 3415375, at *3 (N.D. Cal. Oct. 21, 2009) (by invoking fraudulent concealment to toll the statute of limitations, plaintiff “waived protection over communications that demonstrate when and how it learned of the alleged fraud, as well as communications that relate to whether it had actual or presumptive knowledge of facts such that it was on inquiry notice of such fraud”), *objections overruled*, C 08–2581 JF (HRL), 2009 WL 4981156 (N.D. Cal. Dec. 15, 2009).

Respectfully submitted,

/s/ Lewis J. Liman

Lewis J. Liman

cc: All Counsel of Record (by hand and email)